Supreme Court, U.S.
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No. 10-____

In The
Supreme Court of the United States

KENNETH DEREK ANTHONY PILLAY,
Petitioner-Appellant-Plaintiff,
v.
CISCO SYSTEMS, INC., ADDITIONAL NAMED DEFENDANTS (see *infra*), and DOES 1 through 100,
Defendants,

Honorable MARILYN HALL PATEL,
Intervenor-Appellee,
MOTIONS AND PRO SE UNIT of the U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT,
Intervenor-Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

KENNETH DEREK ANTHONY PILLAY
587 Middlebury Drive
Sunnyvale, California 94087-1319
Tel: (408) 674-4484
Email: ken@pillay.com
Petitioner-Appellant-Plaintiff

QUESTIONS PRESENTED FOR REVIEW

1. Whether it is improper for a court which has judicial power under Article III of the U.S. Constitution, as has in this case the United States District Court for the Northern District of California ("N.D. Cal"), to *sua sponte* dismiss a complaint in a civil action *prior to service of process* of that complaint on the defendant(s).

2. Whether the United States Court of Appeals for the Ninth Circuit ("9th Cir.") erred in summarily affirming the N.D. Cal.'s judgment which *sua sponte* dismissed Petitioner's Original Complaint prior to service of that complaint on the Named Defendants, and in summarily denying Petitioner's combined Petition For Panel Rehearing And Rehearing *En Banc*, which appears to conflict with appellate precedent, intra-circuit and inter-circuit, and with precedent of this Court.

3. Whether the operation and conduct of the Motions And Pro Se Unit of the 9th Cir., which short-circuited Petitioner's appeal to the September 2009 Motions Panel (non-merits track) for summary affirmation of the N.D. Cal.'s judgment, prejudiced the disposition of Petitioner's appeal while he appeared *pro se*.

NAMED PARTIES TO THE PROCEEDINGS

The Petitioner is:
KENNETH DEREK ANTHONY PILLAY.

The Named Defendants are:
CISCO SYSTEMS, INC., ("Cisco"), and
SUSAN L. BOSTROM, FRANK A. CALDERONI, LARRY R. CARTER, JONATHAN CHADWICK, JOHN T. CHAMBERS, MARK CHANDLER, WIM ELFRINK, RICHARD J. JUSTICE, and RANDY POND (who are Executive Directors of Cisco), and
CAROL A. BARTZ, M. MICHELE BURNS, MICHAEL D. CAPELLAS, BRIAN L. HALLA, JOHN L. HENNESSEY, RICHARD M. KOVACEVICH, RODERICK C. MCGEARY, MICHAEL K. POWELL, STEVEN M. WEST and JERRY YANG (who are Directors of the Board of Directors of Cisco), and
CISCO TECHNOLOGY, INC. and
CISCO SYSTEMS HOLDINGS I, INC. (which are affiliated companies of Cisco).

The Intervenors are:
Judge MARILYN HALL PATEL at the N.D. Cal., and the MOTIONS AND PRO SE UNIT of the 9th Cir.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Kenneth Derek Anthony Pillay, respectfully petitions this Court to grant a writ of certiorari to review the orders below.

ORDERS BELOW

The Memorandum & Order of the N.D. Cal., which *sua sponte* dismissed Petitioner's Original Complaint *prior to service of process* of that complaint on the Named Defendants, appears at App. 2 to this Petition and is not reported.

The Order of the September 2009 Motions Panel of the 9th Cir., which summarily affirmed the N.D. Cal.'s judgment, appears at App. 7 to this Petition and is not reported.

The Order of the panel which had comprised the September 2009 Motions Panel of the 9th Cir., which summarily denied Petitioner's Petition For Panel Rehearing And Rehearing *En Banc,* and as a result of which this Petition For Writ Of Certiorari is timely submitted, appears at App. 11 to this Petition and is not reported.

JURISDICTION

The judgment of the N.D. Cal. was issued on June 4, 2009 and filed on June 5, 2009. (App. 2).

The order of the 9th Cir. which summarily affirmed the N.D. Cal.'s judgment was filed on September 15, 2009. (App. 7)

The order of the 9th Cir. which denied Petitioner's Petition For Panel Rehearing And Rehearing *En Banc* was filed on *Friday the 13th* of November, 2009. (App. 11).

The mandate of the 9th Cir. was filed on November 23, 2009. (App. 13).

This Court has jurisdiction for review pursuant to 28 U.S.C. § 1254(1).

PROVISIONS OF LAW INVOLVED

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Pertaining to *qui tam* like causes of action

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The pertinent text of the above-cited provisions of law involved appears at App. 15 *et seq.*; *see infra*.

STATEMENT OF THE CASE

A. Introduction.

This petition presents questions for review by this Court arising from the 9th Cir.'s disposition of Petitioner's appeal in case number 09-16268 in that court which appears to conflict with U.S. appellate precedent, intra-circuit and inter-circuit, and with precedent of this Court.

The questions presented for review pertain to matters of exceptional national importance which compel the grant of a writ of certiorari to review the standards, for assessing the adequacy of a complaint in a civil action in order to survive a district court's *sua sponte* dismissal of that complaint, and if dismissal of such a complaint is at all permitted *prior to service of process*, and determining due process rights of a non-attorney party appearing *pro se*.

The district court case, pertaining to this Petition For Writ Of Certiorari, was opened in the N.D. Cal. in case number 3:09-CV-02226-MHP on May 20, 2009 ("Federal Action"), arising from alleged violations by Defendants in themselves or via their current or former directors, officers, employees, agents, assigns or affiliated companies against Petitioner (the Plaintiff in that Federal Action) of certain amendments of the U.S. Constitution and laws of the U.S.

The alleged violations include commit or aid, abet, counsel, command, induce unlawful electronic surveillance and unreasonable searches on Petitioner's communications, unlawful interception or disclosure of Petitioner's information or records pertaining to Petitioner's communications, deprivation or conspiracy to deprive or neglect to prevent deprivation of Petitioner in rights or privileges, abridgement of Petitioner's freedom of communications, abridgement of Petitioner's privileges and immunities, and retaliation against Petitioner by a publicly traded company.

As a result of the alleged violations perpetrated on Petitioner by Defendants, Petitioner was injured in property and in person and therefore sought redress via the N.D. Cal. which had jurisdiction over the causes of action pertaining to those violations.

In the Federal Action, Petitioner also presented additional potential *qui tam* equivalent causes of action pertaining to alleged potential unfair or deceptive acts or practices in or affecting commerce or labor at Defendant Cisco Systems, Inc., ("Cisco"), including alleged violations of the GNU Public License Version 2, for the N.D. Cal.'s review and adjudication or referral to other appropriate U.S. entities which may have further jurisdiction over those causes of action.

Background relevant to the alleged violations in the Federal Action include, Petitioner's response in an ongoing dissolution of marriage ("divorce") action opened in or around October 3, 2002 in the Superior Court for the County of Santa Clara in the State of California which may conjure this Court's attention given its precedent in *Palmore v. Sidoti*, 466 U.S. 429 (1984); an attorney fee dispute between a divorce attorney and Petitioner arising from that divorce action; Petitioner's employment at Cisco and stock options held by Cisco on behalf of Petitioner which provided sources of funds which the divorce attorney siphoned; Petitioner's response to an attorney fee dispute action brought in that same state court by that same divorce attorney against Petitioner while Petitioner worked at Cisco; Petitioner's attempts at propounding discovery on Cisco during the attorney fee dispute action in that state court as permitted under the civil discovery laws and the electronic discovery provisions held in *United States v. Forrester,* 512 F.3d 500 (9th Cir. 2007), Second Amendment filed January 7, 2008; and Petitioner's ongoing pursuit to secure his rights, privileges and immunities under the protection of the U.S. Constitution, the laws of the U.S. and the laws of the State of California.

The full original record for the Federal Action consisting of the relevant pleadings, orders and other documents is accessible electronically via the PACER

systems for the N.D. Cal. and the 9th Cir. Petitioner reproduces a subset of that original record in the Appendix to this brief, *see infra*, for this Court's convenience during its assessment of this Petition For Writ Of Certiorari.

Given that Petitioner's Original Complaint was dismissed at the very early pleading stage, if it pleases this Court, Petitioner requests this Court to consider requesting the clerk of the 9th Cir. to certify and transmit the full original record for the Federal Action to this Court, which provides record of the proceedings in both the N.D. Cal. and the 9th Cir., for this Court's additional reference if required during its assessment of this Petition For Writ Of Certiorari.

B. Summary of the Proceedings in the Federal Action.

The Federal Action was initiated in the N.D. Cal. on May 20, 2009 and as a result that court docketed the case and set the case for an initial Case Management Conference ("CMC") scheduled for August 31, 2009.

On June 4, 2009, however, and before that Federal Action could start to ripen, U.S. district court judge Marilyn Hall Patel intervened and intercepted that case by issuing a Memorandum & Order which was entered in the N.D. Cal. on June 5, 2009 ("Patel Order"), (App. 2 & N.D. Cal. Dkt. 5), and

which *sua sponte* dismissed Petitioner's Original Complaint (N.D. Cal. Dkt. 1).

When the N.D. Cal. instantly dismissed that Original Complaint, the Named Defendants had not been served that complaint, and since the inception of the Federal Action the Named Defendants have not appeared in any proceedings in that action, and have neither answered that complaint nor filed a motion, pursuant to Fed. R. Civ. P. 12(b)(6), to request the N.D. Cal. to dismiss that complaint.

On June 11, 2009 Petitioner timely filed the Notice Of Appeal as to the Patel Order. (N.D. Cal. Dkt. 6).

On June 18, 2009 the 9th Cir. opened the corresponding case for the appeal in the Federal Action, in case number 09-16268, and issued a Time Schedule Order (9th Cir. Dkt. 1-4) which provided that Petitioner's Opening Brief for the appeal shall be filed on or before July 28, 2009. No date however was set for response(s) to the Opening Brief, and no other party, other than the Petitioner, was added to the 9th Cir.'s Electronic Case Filing ("ECF") Service List for that appeal case.

On June 25, 2009 the 9th Cir.'s deputy clerk Corina Orozco, as had likewise occurred in the N.D. Cal., intervened and intercepted the appeal before briefing had started in the appeal, by *sua sponte* issuing and entering a procedural Order to show

cause ("Orozco Order") (App. 5 & 9th Cir. Dkt. 4) which provided in pertinent part that:

> "[a]ppellant shall show cause why the judgment in this appeal should not be summarily affirmed[.]".

Via that Orozco Order, Petitioner's appeal was immediately short-circuited to the Motions Panel (non-merits) track of the 9th Cir. for summary affirmation of the N.D. Cal.'s judgment.

On July 15, 2009 Petitioner, appearing *pro se* in the 9th Cir., timely filed his Response to the Orozco Order (9th Cir. Dkt. 5).

Further, as of July 27, 2009 the 9th Cir. had not issued its decision as to the Orozco Order and Petitioner's Response to that order. Given that no specific order had been issued by the 9th Cir. to stay the time schedule for the appeal, and as had been previously directed by the 9th Cir.'s Time Schedule Order issued on June 18, 2009, Petitioner timely filed his Opening Brief (9th Cir. Dkt. 6) on July 27, 2009, before the due date of July 28, 2009.

Because no other parties had been designated by the clerk of the 9th Cir. to appear in the appeal, via Petitioner's filing of the Opening Brief for the appeal, *the appeal case then became fully-briefed based on the current record* and was ready to be submitted to a *Merits* Panel of the 9th Cir. for decision(s) regarding further proceedings for the

appeal, including whether responses from other parties or oral argument were required, and for potential eventual review and adjudication on the merits.

On August 17, 2009 Petitioner conferred with Ms. Susan Valerie Gelmis, the supervising attorney of the Motions And Pro Se Unit of the 9th Cir., who appeared to have been assigned to the appeal case. Ms. Gelmis informed Petitioner that the appeal was going to be presented to a *Motions* Panel, instead of a *Merits* Panel, of the 9th Cir. and also that the appeal could not be presented to the August 2009 Motions Panel (which comprised of Judges Schroeder, Kleinfeld and M. Smith) because one of the judges who had been assigned to the August 2009 Motions Panel (Judge Milan D. Smith) had to be recused due to his having an investment or interest pertaining to Cisco who is one of the Named Defendants in the Federal Action.

The 9th Cir.'s policy regarding allocation of judges to comprise a motions panel provides in pertinent part that:

> "[I]n the event of recusal or unavailability, we will draw another judge at random to consider the matter(s) in question.".

However, instead of drawing another judge at random to replace Judge Milan D. Smith to consider that matter during August 2009, the appeal was

continued to the month of September 2009 for adjudication by the September 2009 Motions Panel, the panel membership composition of which presumably had yet to be determined by the Motions And Pro Se Unit (involving Ms. Gelmis).

On August 31, 2009 the 9th Cir. issued its Amended Opinion in *Mohamed et al. v Jeppesen Dataplan, Inc.*, 579 F.3d 943 (9th Cir. 2009), (9th Cir. Dkt. 61 in case # 08-15693), which amended its prior original Opinion in *Mohamed* that had been entered on April 28, 2009, 563 F.3d 992 (9th Cir. 2009), (9th Cir. Dkt. 52 in case # 08-15693); Judge Schroeder was a member of the panel, which also comprised of judges Hawkins and Canby, that had issued that original Opinion in *Mohamed*. In his Response to the Orozco Order filed on July 15, 2009, and also in his Opening Brief filed on July 27, 2009, in the 9th Cir. Petitioner had cited that original Opinion in *Mohamed* dated April 28, 2009.

On September 15, 2009 the Motions And Pro Se Unit of the 9th Cir., which intercepted all of Petitioner's filings in the 9th Cir. because Petitioner appeared *pro se* in that court, teed up Petitioner's appeal case ex-parte (without the appearance of any of the parties) to the 9th Cir.'s September 2009 Motions Panel (which comprised of Judges Pregerson, Tashima & N.R. Smith) and as a result an Order was issued by that panel and entered on September 15, 2009 which "summarily affirm[ed] the

district court's judgment." (App. 7 & 9th Cir. Dkt. 10).

On September 17, 2009 Petitioner filed, via the 9th Cir.'s ECF system, a combined brief for a two-pronged Petition For Panel Rehearing And Rehearing *En Banc* ("Rehearing Petitions") (9th Cir. Dkt. 11) using the 9th Cir.'s ECF category of "File a Petition for Rehearing En Banc (FRAP 35, 9th Cir. R. 35-1)". At page 10 of that combined brief, given that Petitioner had cited the original Opinion in *Mohamed*, Petitioner requested the 9th Cir. to:

> "[c]onsider if coordination between those two appeal cases (this case and *Mohamed*) may promote an efficient determination of the requested petitions for rehearing in those cases[.]".

On September 18, 2009 Ms. Marianne Armenta at the 9th Cir. instructed Petitioner to re-file his combined brief for the Rehearing Petitions using instead the 9th Cir.'s ECF category of "File a Combination Petition for Panel Rehearing/En Banc (FRAP 35, 40)". Petitioner complied with Ms. Armenta's instruction and re-filed that same combined brief for the Rehearing Petitions using the ECF category specified by Ms. Armenta (9th Cir. Dkt. 12).

On September 29, 2009 Petitioner further re-filed that same combined brief for the Rehearing

Petitions, that time re-using the 9th Cir.'s ECF category of "File a Petition for Rehearing En Banc (FRAP 35, 9th Cir. R. 35-1)" (9th Cir. Dkt. 13) to unambiguously put the 9th Cir. on notice that regardless of Petitioner using a combined brief to contain the Rehearing Petitions, in addition to submitting a Petition For Panel Rehearing directed to the panel which had comprised the September 2009 Motions Panel, *Petitioner was also explicitly submitting* the Petition For Rehearing *En Banc* prong *directed to the 9th Cir.'s full active court.*

On October 1, 2009 Ms. Gelmis however informed Petitioner that his Rehearing Petitions (9th Cir. Dkt. 11, 12, 13) was going to be instead treated by the 9th Cir. as a Motion For Reconsideration which would be submitted on *Friday the 13th* of November, 2009 to the panel that had comprised the September 2009 Motions Panel for summary disposition. The Motions And Pro Se Unit's decision to treat Petitioner's Rehearing Petitions as a Motion For Reconsideration proved to be prejudicial to Petitioner's appeal because the 9th Cir.'s General Order 6.11 constrains a petition for rehearing *en banc* to a motions panel for disposition on behalf of the full active court, which therefore would prevent Petitioner from being able to *directly* petition the 9th Cir.'s full active court (comprising of all non-recused judges) to solicit its interest in hearing Petitioner's Petition For Rehearing *En Banc* prong.

On October 3, 2009, pursuant to the 9th Cir.'s Rule 27-3(b), Petitioner filed an Urgent Motion (9th Cir. Dkt. 14) requesting the October 2009 Motions Panel of the 9th Cir. (which comprised of Judges Trott, W. Fletcher & Rawlinson) to clarify as to which documented and enforceable rules and procedures did the 9th Cir. have to enable Petitioner to directly petition the full active 9th Cir. court for Petitioner's Petition For Rehearing *En Banc* prong.

Petitioner's Urgent Motion was not decided by the 9th Cir.'s October 2009 Motions Panel, and instead the Motions And Pro Se Unit (Ms. Gelmis) submitted that Urgent Motion to the panel that had comprised the September 2009 Motions Panel of the 9th Cir. (i.e. Judges Pregerson, Tashima & N.R. Smith) for disposition of that motion.

On October 8, 2009 that panel issued an Order (App. 9 & 9th Cir. Dkt. 15) which simply affirmed the Motions And Pro Se Unit's posture that Petitioner's Petition For Panel Rehearing And Rehearing *En Banc* would instead be treated as a Motion for Reconsideration to be heard on *Friday the 13th* of November, 2009 by that same panel which had summarily affirmed the district court's judgment.

As a result of that panel's Order, Petitioner was denied access in the 9th Cir. to directly petition the 9th Cir.'s full active court for the Petition For Rehearing *En Banc* prong, because that prong

became constrained to the discretion of that same panel for it to determine whether the Petition For Rehearing *En Banc* prong could be submitted to the full active 9th Cir. court for determining its interest in rehearing the case *en banc*.

On October 27, 2009 the 9th Cir. entered an Order in *Mohamed* (9th Cir. Dkt. 62 in case # 08-15693) which provided that case would be reheard *en banc*. In Petitioner's appeal case, Petitioner had cited the 9th Cir.'s original Opinion in *Mohamed* as case law authority in support of Petitioner's Rehearing Petitions. Via the 9th Cir.'s decision to rehear *Mohamed en banc*, significant case law authority that had been cited in Petitioner's then still undecided Rehearing Petitions which were scheduled to be heard and determined on *Friday the 13th* of November, 2009, was thus set aside and no longer thereafter accepted by the 9th Cir. as precedent.

On November 2, 2009 Petitioner therefore filed an Emergency Motion (9th Cir. Dkt. 16), pursuant to the 9th Cir.'s Rule 27-3(a), to attempt to avoid irreparable harm to Petitioner's then undecided Rehearing Petitions. In that Emergency Motion, Petitioner requested the 9th Cir.'s November 2009 Motions Panel (which comprised of Judges Wardlaw, Fisher and Berzon) to vacate the *Friday the 13th* of November, 2009 hearing date that had been set by the Motions And Pro Se Unit for Petitioner's appeal case, and to STAY the hearing and determining of

Petitioner's Rehearing Petitions until the 9th Cir. issues its superseding *en banc* decision in *Mohamed*. The Motions And Pro Se Unit did not submit Petitioner's Emergency Motion to the November 2009 Motions Panel for disposition.

On *Friday the 13th* of November, 2009 the panel which had comprised the September 2009 Motions Panel (which comprised of Judges Pregerson, Tashima and N.R. Smith) issued and entered an Order which provided that:

> "Appellant's petition for panel rehearing and rehearing en banc, construed as a motion for reconsideration and reconsideration en banc pursuant to Ninth Circuit Rule 27-10(b), is denied on behalf of the full court. *See* General Orders 6.11. All other pending requests for relief are denied. No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions shall be filed or entertained in this closed docket."
>
> (App. 11).

On November 23, 2009 the 9th Cir. issued the Mandate in Petitioner's appeal case. (App. 13 & 9th Cir. Dkt. 19).

The 9th Cir. reheard *Mohamed en banc* on December 15, 2009 and took that matter under submission, and the *en banc* decision is still pending.

Petitioner timely submits to this Court this Petition For Writ Of Certiorari as to the 9th Cir.'s Order issued on September 15, 2009 affirming the district court's judgment (App. 7), and the 9th Cir.'s Order issued on *Friday the 13th* of November, 2009 denying Petitioner's Petition For Panel Rehearing And Rehearing *En Banc* (App. 11).

To ensure proper procedure and completeness in the proceedings in the Federal Action, and as permitted under Fed. R. Civ. P. 4(c)(1) and 4(m), on August 20, 2009 Petitioner caused to be served on Defendant Cisco copies of the Summons In A Civil Action, the Original Complaint, and other accompanying documents, arising from the initiating of the Federal Action. On August 21, 2009 the N.D. Cal. entered the Certificate of Service pertaining to service of those documents (N.D. Cal Dkt. 13) and provided in pertinent part that "[a]nswer due 9/9/2009[.]". On August 25, 2009, Petitioner additionally caused to be served copies of those same case initiating documents on the Additional Named Defendants in the Federal Action.

To date, neither Cisco nor any of the Additional Named Defendants have filed answer(s)

to the Original Complaint on or before the due date of September 9, 2009 as directed by the N.D. Cal.

Fed. R. Civ. P. 8(b)(6) provides in pertinent part that:

> "*Effect of Failing to Deny*. An allegation – other than one relating to the amount of damages – is admitted if a responsive pleading is required and the allegation is not denied[.]"

Perhaps, the Named Defendants' lack of response(s) to the Summons and Original Complaint may be construed as their admission to the allegations presented in the Original Complaint in the Federal Action.

ARGUMENT FOR GRANTING THE WRIT

I. The Dismissal Of The Original Complaint Prior To Service Of Process On The Defendants Was Improper.

The N.D. Cal. in the Federal Action appears to have been in a hurry to *sua sponte* dismiss Petitioner's Original Complaint prior to service of process of that complaint on the Named Defendants in that action. Petitioner filed that complaint on May 20, 2009 and that court promptly dismissed that complaint on June 4, 2009. Petitioner contends that the dismissal of his Original Complaint was premature, erroneous and improper.

There have been no documents filed in the Federal Action which argue for either judicial, or legislative, or executive, or corporate, or partisan affiliation immunity and privilege on behalf of any of the Named Defendants, and therefore Petitioner contends that there appears to have been no lawful basis that can be relied on to immunize the Named Defendants from prosecution and exonerate them from being required to file written response(s) to the Original Complaint in the Federal Action.

Fed. R. Civ. P. 12(b) and 12(b)(6) provides in pertinent part that:

> "[a] *party* may assert * * * (a defense by motion for) failure to state a claim upon which relief can be granted." (emphasis added)

Fed. R. Civ. P. 41(b) further provides in pertinent part that:

> "[a] *defendant* may *move* to dismiss the action or any claim against it[.]" (emphasis added)

While the Federal Rules of Civil Procedure allow for a defendant to move the court to dismiss a complaint, when the Original Complaint was dismissed in the Federal Action none of the Named Defendants had been served that Original Complaint, and none of the Named Defendants had responded or appeared, and specifically none of the Named Defendants had filed a Rule 12(b)(6) motion to request the court to dismiss that Original Complaint, in that action. Therefore, Petitioner contends that it was premature for the N.D. Cal. to intervene and intercept Petitioner's Original Complaint soon after it was filed and the case docketed, and prior to conducting the first CMC which had already been set by that court.

The further summary affirmation of the N.D. Cal.'s judgment, and the summary denial of Petitioner's Petition For Panel Rehearing And Rehearing *En Banc* by the 9th Cir.'s September 2009 Motions Panel prejudiced Petitioner's access in the 9th Cir. because Petitioner was not allowed to

directly petition the full active court for its interest in rehearing the appeal *en banc*.

The 9th Cir.'s September 2009 Motions Panel's summary affirmation of the N.D. Cal.'s judgment was in response to the 9th Cir.'s Orozco Order which had short-circuited Petitioner's appeal to the Motions Panel (non-merits) track for disposition in that court.

However, as a result of Petitioner timely filing his Opening Brief for the appeal on July 27, 2009, and because none of the Named Defendants had been directed by the 9th Cir. to appear in that appeal, the appeal case became fully briefed based on the record then. Petitioner therefore contends that thereafter the Orozco Order had become moot, because it was superseded by the timely filing of Petitioner's Opening Brief which that court had directed needed to be filed, and that therefore the appeal should have instead proceeded to a *Merits* Panel for review and adjudication on the merits, rather than to the Motions Panel track for summary affirmation of the district court's judgment.

Petitioner further contends that the 9th Cir.'s decision in Petitioner's appeal directly conflicts with other appellate precedent, intra-circuit and inter-circuit, and with precedent of this Court.

A. Intra-Circuit Precedents.

One of the most recent and notable intra-circuit precedents was in *Mohamed* wherein the 9th Cir. issued its original Opinion on April 28, 2009. At ¶ 23, pages 4946-7, of that original Opinion the 9th Cir. held in pertinent part that:

> "[P]laintiffs here have stated a claim on which relief can be granted and therefore should have an opportunity to present evidence in support of their allegations, without regard for the likelihood of ultimate success. *See Scheuer*, 416 U.S. at 236 (a district court acts "prematurely" and "erroneously" when it dismisses a well-pleaded complaint, thereby "preclud[ing] any opportunity for the plaintiffs" to establish their case "by subsequent proof"); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, - (2007) ("[A] well-pleaded complaint may proceed even if it appears 'that a recovery is very remote and unlikely.'" (quoting *Scheuer*, 416 U.S. at 236))."

The 9th Cir. further held in pertinent part that:

> "[n]either the Federal Rules nor *Reynolds* would permit us to dismiss this case at the *pleadings stage* on the basis of an evidentiary privilege that must be invoked *during discovery* or *at trial*[.]"

The 9th Cir., via its original Opinion in *Mohamed*, appeared to reinforce the safeguards for preventing dismissal of a complaint or case at the pleadings stage.

In the *Mohamed* appeal case, petitions for panel rehearing and rehearing *en banc* were filed on June 12, 2009 (9th Cir. Dkt. 54 and 56 in case # 08-15693). There appears to be some procedural similarities between the *Mohamed* case and Petitioner's case in that both cases are at the early pleading stage, and in both cases the Defendant(s) have not answered the complaint, and in both cases intervenor(s) have intercepted the complaint.

On December 15, 2009 the 9th Cir. reheard *Mohamed en banc* and the matter was taken under submission and the *en banc* decision remains pending.

There exist other precedents of the 9th Cir. which Petitioner recited during his appeal in the 9th Cir. in support of his contention that the N.D. Cal.'s *sua sponte* dismissal of Petitioner's Original Complaint in the Federal Action was premature, erroneous and improper, and which support that Petitioner's Original Complaint should have been liberally construed especially given that Petitioner appeared *pro se* in the Federal Action.

In *Balistreri v. Pacifica Police Department et al*, 901 F.2d 696 (9th Cir. 1990), at ¶ 14 the 9th Cir. held in pertinent part that:

> "[p]ro se pleadings are liberally construed, particularly where civil rights claims are involved. Christensen v. C.I.R. 786 F.2d 1382, 1384-85 (9th Cir. 1986), Bretz v. Kelman, 773 F.2d 1026, 1027 n. 1 (9th Cir. 1985) (en banc)[.]"

In *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991) at ¶ 15 the 9th Cir. held in pertinent part that:

> "[W]ith respect to pro se litigants this burden is relaxed. See Karim-Panahi v. Los Angeles Police Dept., 839 F.2d 621 623 (9th Cir. 1988). (*pleadings of pro se civil rights plaintiff to be construed liberally, affording plaintiff benefit of any doubt*)[.]" (emphasis added)

In *Karim-Panahi v. Los Angeles Police Department*, 839 F.2d 621 (9th Cir. 1988), at ¶ 5 the 9th Cir. held in pertinent part that:

> "[t]he court did not identify any particular deficiencies in the complaint[.]"

Id. at ¶ 11:

> "[b]efore dismissing a pro se civil rights complaint for failure to state a claim, the

> district court must give the plaintiff a statement of the complaint's deficiencies. Eldridge, 832 F.2d at 1136; Noll, 809 F.2d at 1448-49[.]"

Id. at ¶ 19:

> "[O]n remand, the district court should advise Karim-Panahi of the deficiencies, if any, in his allegations under section 1983. We do not, of course require the district court to act as legal advisor to the plaintiff, Noll, 809 F.2d at 1448-49. However, the court must do more than simply advise the pro se plaintiff that his complaint needs to be shorter and more concise. Cf. Eldridge, 832 F.2d at 1136-37. (where magistrate ordered pro se plaintiff in civil rights action to file amended complaint "complying with the Local Rules of this Court in form" but failed to explain how complaint was deficient, district court abused its discretion in dismissing action for noncompliance with court's order). The district court is required to draft "a few sentences explaining the deficiencies." Noll, 809 F.2d at 1449."

Petitioner contends that the N.D. Cal. failed to point out and explain any specific deficiencies, if any, in any of the allegations presented in Petitioner's Original Complaint.

In *Weilburg v. Shapiro*, 488 F.3d 1202, 1205 (9th Cir. 2007) at paragraph 11, the 9th Cir. held in pertinent part that:

> "[I]n reviewing a dismissal for failure to state a claim, the court accepts all factual allegations in the complaint as true and draws all reasonable inferences in favor of the plaintiff. *Oki Semiconductor Co. v. Wells Fargo Bank*, 298 F.3d 768, 772 (9th Cir. 2002). *Pro se* complaints are to be construed liberally and "may be dismissed for failure to state a claim only where 'it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief'" Franklin v. Murphy, 745 F.2d 1221, 1228, 1230 (9th Cir. 1984) (quoting *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S. Ct. 594, 30 L.Ed.2d 652 (1972))[.]"

All of the foregoing cited intra-circuit precedents support Petitioner's contention that the dismissal of the Original Complaint was premature, erroneous and improper.

B. Inter-Circuit Precedent.

In the Opening Brief for Petitioner's appeal (9th Cir. Dkt. 6), Petitioner cited as precedent the decision in *Oatess v. Sobolevitch et al.*, 914 F.2d 428 (3rd Cir. 1990), of the United States Court of Appeals for the Third Circuit ("3rd Cir.").

In *Oatess*, at ¶ 2, it was stated in pertinent part that:

> "Oatess' complaint alleged that defendants had conspired to ensure the dismissal of a civil case which he had filed * * * The defendants in the federal suit were two state court judges, a prosecuting attorney, several court administrators, and several private attorneys."

Id. at ¶ 5 the majority held in pertinent part that:

> "[D]ismissal of the complaint under Rule 12(b)(6) prior to service * * * interferes with the orderly process of the case."

Id. at ¶ 8:

> "Other concerns arise if dismissal under Rule 12(b)(6) occurs before service of process. *In bypassing the procedural requirement of service and acting without the opposing party's input, the district court bypasses our tradition of adversarial proceedings. The judge may be perceived as having abandoned the role of neutral arbiter.* Ricketts v. Midwest National Bank, 874 F.2d 1177, 1184 (7th Cir. 1989); Tingler v. Marshall, 716 F.2d 1109, 1111 (6th Cir. 1983); Franklin v. State of Oregon, 662 F.2d 1337, 1342 (9th Cir. 1981). While a judge could always give notice that the complaint might not pass muster under Rule 12(b)(6) and

> invite a responsive memorandum, *when this is done before service of process the court may appear to be conducting a private litigation with the plaintiff while the defendant sits on the sidelines. As a matter of law and policy, we think that inappropriate, especially when the plaintiff is proceeding pro se.*" (emphasis added)

Id. at ¶ 10:

> "For the foregoing reasons, the district court's dismissal of the complaint under Rule 12(b)(6) prior to service of process was improper. Accordingly, the court's order of dismissal will be vacated and this case remanded for service of process and further proceedings[.]"

Petitioner contends that the 9th Cir.'s September 2009 Motions Panel's summary affirmation of the N.D. Cal.'s judgment directly conflicts with the 3rd Cir.'s *Oatess* precedent. Petitioner is unaware of any new case law that has since overruled the *Oatess* case law and policy which appears to forbid dismissal of a complaint prior to service of process.

C. U.S. Supreme Court Precedent.

In a recent decision of this Court in *Ashcroft et al. v. Iqbal et al.*, 556 U.S. ___, 129 S.Ct. 1937 (May 18, 2009), while this Court reviewed the standard for

assessing the adequacy of pleadings in order to survive a motion to dismiss, this Court also held, in section 2(b) at page 2 of the Syllabus in pertinent part, that:

> "[W]hen there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief[.]".

In the Federal Action, Petitioner, appearing *pro se*, presented factual allegations in the Original Complaint in support of the causes of action therein. Neither the N.D. Cal. nor the 9th Cir. applied this Court's *Ashcroft* plausibility standard to Petitioner's Original Complaint to determine whether dismissal of that complaint was appropriate.

This Court's decision in *Ashcroft* also came from a narrow majority (a 5-4 vote) with two dissenting opinions. It appears that this Court struggled with the question as to when is it appropriate for a complaint in a civil action to be dismissed.

In his dissenting opinion in *Ashcroft*, former Justice Souter of this Court opined at pages 9-10 in pertinent part that:

> "[*T*]*wombly* does not require a court at the motion-to-dismiss stage to consider whether

> the factual allegations are probably true. We made it clear, on the contrary, that a court must take the allegations as true, no matter how skeptical the court may be. See *Twombly*, 550 U.S. at 555 (a court must proceed "on the assumption that all the allegations in the complaint are true (even if doubtful in fact)"); *id.* at 556 ("[A] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of the facts alleged is improbable"); see also *Neitzke v. Williams*, 490 U.S. 319, 327 (1989) ("Rule 12(b)(6) does not countenance ... dismissals based on a judge's disbelief of a complaint's factual allegations"). The sole exception to this rule lies with allegations that are sufficiently fantastic to defy reality as we know it; claims about little green men, or the plaintiff's recent trip to Pluto, or experiences in time travel. That is not what we have here.".

In a recent opinion from the 9th Cir. in the case *Al-Kidd v. Ashcroft*, 580 F.3d 949 (9th Cir. 2009), entered in that court on September 4, 2009, at ¶ 16 page 12318, the majority held in pertinent part that:

> "[*T*]*wombly* and *Iqbal* do not require that the complaint include all the facts necessary to carry the plaintiff's burden. "Asking for plausible grounds to infer" the existence of a

> claim for relief "does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence" to prove the claim. *Twombly*, 550 U.S. at 566[.]"

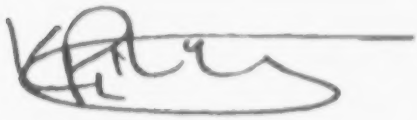
The 9th Cir.'s *Al-Kidd* decision appears to provide further safeguards against dismissal of a complaint even when applying this Court's *Ashcroft* plausibility standard at the pleading stage.

Plaintiff contends that, as was held by 3rd Cir. in *Oatess*, the dismissal of his Original Complaint in the Federal Action prior to service of process of that complaint on Defendants was improper. Petitioner therefore requests this Court to grant a writ of certiorari to review the standard as to whether dismissal of a complaint in a civil action prior to service of process is improper, given this Court's prior holding in *Ashcroft* that the plausibility standard must first be applied before a complaint is dismissed, and given the 3rd Cir.'s holding in *Oatess* which directly supports Petitioner's contention.

CONCLUSION

For the foregoing reasons, Petitioner requests this Court to grant a writ of certiorari, vacate the orders below, and remand this case for further proceedings.

Respectfully submitted by:



KENNETH DEREK ANTHONY PILLAY
587 Middlebury Drive
Sunnyvale, California 94087-1319
Tel: (408) 674-4484
Email: ken@pillay.com
Petitioner-Appellant-Plaintiff

Dated: January 27, 2010

(Originally submitted on January 18, 2010)

APPENDIX TO THE PETITION

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

KENNETH DEREK ANTHONY PILLAY,
Plaintiff,

v.

CISCO SYSTEMS INC, and DOES 1 TO 100, inclusive,
Defendants.

No. C 09-02226 MHP

MEMORANDUM & ORDER

Re: Dismissal of Complaint

(Filed June 5, 2009)

On May 20, 2009, plaintiff Kenneth Derek Pillay ("plaintiff") filed, pro se, a complaint advancing more than twenty causes of action ranging from unlawful electronic surveillance to abridgment of freedom of communications. Plaintiff's allegations concern his divorce proceedings, an attorney fee dispute that arose therefrom and related to stock options held by Cisco ("defendant") in plaintiff's name, allegations of a conflict of interest by a California superior court judge, and plaintiff's termination of employment with defendant. Plaintiff

also delves into an extensive discussion of the specific projects he worked on while employed with defendant, such as his implementation of Open Source software, because it "may be relevant" to the federal causes of action.

As a threshold matter, lawsuits concerning divorce and family law are generally matters for state courts, not federal courts such as this one. See In re Burrus, 136 U.S. 586, 593-594 (1890); Ankenbrandt v. Richards, 504 U.S. 689, 703 (1992). That issue notwithstanding, a *sua sponte* dismissal of the complaint is compelled, because plaintiff fails to meet the bare requirements of Federal Rule of Civil Procedure 8. A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). A motion to dismiss should be granted if plaintiff fails to proffer "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. Balistreri v. Pacific Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

If the instant complaint has some wheat, i.e., a potentially meritorious claim, it is obscured beyond recognition by the chaff. The long and confused complaint is insufficient to place a defendant on notice of the claims being leveled against it. See

McKeever v. Block, 932 F.2d 795, 798 (9th Cir. 1991) (citation omitted).

Dismissal of a pro se complaint without leave to amend is proper "only if it is absolutely clear that the deficiencies of the complaint could not be cured by amendment." Weilburg v. Shapiro, 488 F.3d 1202, 1205 (9th Cir. 2007) (citation omitted). Here, it is unclear whether the complaint could be remedied by amendment. Accordingly, the complaint is DISMISSED as to all defendants WITHOUT PREJUDICE.

IT IS SO ORDERED.

Dated: June 4, 2009

/s/ Marilyn Hall Patel
MARILYN HALL PATEL
United States District Court Judge
Northern District of California

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KENNETH DEREK ANTHONY PILLAY,

Plaintiff - Appellant,

v.

CISCO SYSTEMS, INC.; et al.,

Defendants - Appellees.

No. 09-16268
D.C. No. 3:09-cv-02226-MHP
Northern District of California,
San Francisco

ORDER
(Filed June 25, 2009)

A review of the record demonstrates that this appeal may be appropriate for summary disposition because the questions on which the decision in the appeal depends may be so insubstantial as not to justify further proceedings. See 9th Cir. R. 3-6. Within 21 days from entry of this order, appellant shall show cause why the judgment in this appeal should not be summarily affirmed. Appellees may file a reply to appellant's response within ten days from

service of the response. Appellant's failure to comply with this order shall result in the automatic dismissal of this appeal by the Clerk for failure to prosecute. 9th Cir. R. 42-1.

FOR THE COURT:

Molly C. Dwyer
Clerk of Court

By: Corina Orozco
Deputy Clerk

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KENNETH DEREK ANTHONY PILLAY, Ph. D.,
Plaintiff - Appellant,

v.

CISCO SYSTEMS, INC.; et al.,
Defendants - Appellees.

No. 09-16268

D.C. No. 3:09-cv-02226-MHP
Northern District of California,
San Francisco

ORDER
(Filed September 15, 2009)

Before: PREGERSON, TASHIMA and N.R. SMITH, Circuit Judges.

A review of the record, the response to the June 25, 2009 order to show cause, and the opening brief indicates that the questions raised in this appeal are so insubstantial as not to require further

argument. See *United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

Accordingly, we summarily affirm the district court's judgment.

AFFIRMED.

SG/Pro Se

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KENNETH DEREK ANTHONY PILLAY, Ph. D.,
Plaintiff - Appellant,

v.

CISCO SYSTEMS, INC.; et al.,
Defendants - Appellees.

No. 09-16268

D.C. No. 3:09-cv-02226-MHP
Northern District of California,
San Francisco

ORDER
(Filed October 8, 2009)

Before: PREGERSON, TASHIMA and N.R. SMITH, Circuit Judges.

Appellant's petition for rehearing and rehearing en banc shall be treated as a motion for reconsideration to be decided by the motions panel that issued the original order under Ninth Cir. R. 27-10(b), to be heard and determined in the ordinary

course. Appellant's urgent motion is otherwise denied.

SVG/Pro Se

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KENNETH DEREK ANTHONY PILLAY, Ph. D.,
Plaintiff - Appellant,

v.

CISCO SYSTEMS, INC.; et al.,
Defendants - Appellees.

No. 09-16268

D.C. No. 3:09-cv-02226-MHP
Northern District of California,
San Francisco

ORDER
(Filed November 13, 2009)

Before: PREGERSON, TASHIMA and N.R. SMITH, Circuit Judges.

Appellant's petition for panel rehearing and rehearing en banc, construed as a motion for reconsideration and reconsideration en banc pursuant to Ninth Circuit Rule 27-10(b), is denied on behalf of the full court. See General Orders 6.11. All other pending requests for relief are denied.

No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions shall be filed or entertained in this closed docket.

SVG/Pro Se

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KENNETH DEREK ANTHONY PILLAY, Ph. D.,
Plaintiff - Appellant,

v.

CISCO SYSTEMS, INC.; et al.,
Defendants - Appellees.

No. 09-16268

D.C. No. 3:09-cv-02226-MHP
Northern District of California,
San Francisco

MANDATE
(Filed November 23, 2009)

The judgment of this Court, entered September 15, 2009, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

Molly C. Dwyer
Clerk of Court

Gabriela Van Allen
Deputy Clerk

PERTINENT TEXT OF THE PROVISIONS OF LAW INVOLVED

U.S. CONSTITUTION

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or *abridging the freedom of speech*, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. (emphasis added)

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law. (emphasis added)

Amendment XIII
Section 1
Neither slavery *nor involuntary servitude*, except as a punishment for crime whereof the party shall have been duly convicted, *shall exist within the United States*, or any place subject to their jurisdiction. (emphasis added)

Amendment XIV
Section 1
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES

Pertaining to direct causes of actions

50 U.S.C. § 1810
(Electronic Surveillance)
Civil liability
An aggrieved person, other than a foreign power or an agent of a foreign power, as defined in section

1801 (a) or (b)(1)(A) of this title, respectively, who has been subjected to an electronic surveillance or about whom information obtained by electronic surveillance of such person has been disclosed or used in violation of section 1809 of this title shall have a cause of action against any person who committed such violation and shall be entitled to recover—

(a) actual damages, but not less than liquidated damages of $1,000 or $100 per day for each day of violation, whichever is greater;

(b) punitive damages; and

(c) reasonable attorney's fees and other investigation and litigation costs reasonably incurred.

18 U.S.C. § 1514A (a)(1)(C) and (a)(2)

Civil action to protect against retaliation in fraud cases

(a) Whistleblower Protection for Employees of Publicly Traded Companies.— No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o (d)), or any officer, employee, contractor, subcontractor, or agent of such company, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee

in the terms and conditions of employment because of any lawful act done by the employee—

(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by—

(A) a Federal regulatory or law enforcement agency;

(B) any Member of Congress or any committee of Congress; or

(C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or

(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

18 U.S.C § 2520 (a) & (b)
(Wire And Electronic Communications Interception And Interception Of Oral Communications)
Recovery of civil damages authorized

(a) In General.— Except as provided in section 2511 (2)(a)(ii), any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover from the person or entity, other than the United States, which engaged in that violation such relief as may be appropriate.

(b) Relief.— In an action under this section, appropriate relief includes—

(1) such preliminary and other equitable or declaratory relief as may be appropriate;

(2) damages under subsection (c) and punitive damages in appropriate cases; and

(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

18 U.S.C. § 2707 (a) & (b)
(Stored Wire And Electronic Communications And Transactional Records Access)
Civil action

(a) Cause of Action.— Except as provided in section 2703 (e), any provider of electronic communication service, subscriber, or other person aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in

with a knowing or intentional state of mind may, in a civil action, recover from the person or entity, other than the United States, which engaged in that violation such relief as may be appropriate.

(b) Relief.— In a civil action under this section, appropriate relief includes—

(1) such preliminary and other equitable or declaratory relief as may be appropriate;

(2) damages under subsection (c); and

(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

42 U.S.C. § 1983

Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia

shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1985(3)
(Conspiracy to interfere with civil rights)
(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or

privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. § 1986

Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is

not commenced within one year after the cause of action has accrued.

Pertaining to *qui tam* like causes of actions

8 U.S.C. § 1182(p)(4)
Computation of prevailing wage level

> (4) Where the Secretary of Labor uses, or makes available to employers, a governmental survey to determine the prevailing wage, such survey shall provide at least 4 levels of wages commensurate with experience, education, and the level of supervision. Where an existing government survey has only 2 levels, 2 intermediate levels may be created by dividing by 3, the difference between the 2 levels offered, adding the quotient thus obtained to the first level and subtracting that quotient from the second level

15 U.S.C. § 45(a)(1)
(Unfair methods of competition unlawful)

(a) Declaration of unlawfulness; power to prohibit unfair practices; inapplicability to foreign trade

> (1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.

28 § 1338(b)
(Patents, plant variety protection, copyrights, mask works, designs, trademarks, and unfair competition)
(b) The district courts shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the copyright, patent, plant variety protection or trademark laws.

OTHER PROVISIONS

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Section 4
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